

WISCONSIN ELECTRIC POWER CO.

NOVEMBER 26 (legislative day, NOVEMBER 18), 1943.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 1324]

The Committee on Claims, to whom was referred the bill (S. 1324) for the relief of the Wisconsin Electric Power Co., having considered the same, report favorable thereon with the following amendment:

On page 1, line 11, change the ninth word, "South", to "North".

The purpose of the bill is to authorize the Secretary of the Treasury to pay to the Wisconsin Electric Power Co. of Milwaukee, Wis., the sum of \$5,433.75 in full satisfaction of its claim against the United States for compensation for damage to its property which resulted when an employee of the Works Progress Administration drove an automatic air-driven tool into an underground cable owned by said company.

STATEMENT OF FACTS

On September 23, 1937, and for some time prior thereto, Works Progress Administration employees were engaged on a sewer-construction project in Milwaukee, Wis.; the improvements consisted of the installation of a 15-inch storm sewer and the connecting thereto of several 8-inch drains; the course of the sewer excavations intersected the subsurface electrical facilities of the above company; the Works Progress Administration foreman knew the exact location of said facilities, which were partially exposed. Although the excavation of the concrete street surface necessitated the use of pneumatic spades, after removal of the concrete surface the workers were informed of the location of the electrical facilities and were instructed by the foreman to proceed carefully with pick and shovel. While the foreman was busy at another location, one of the pneumatic-spade operators continued to use the spade, in complete disregard of instructions to the contrary, with the result that he dug into an electric

railway feeder cable, causing extensive damage to the company's intricate system of transmission facilities and caused interruption of electrical service to many industrial establishments in the area. The Administrator of the Federal Works Agency recommends enactment of the proposed legislation.

After carefully considering the report of the Federal Works Agency, the affidavit of the vice president and general manager of Wisconsin Electric Power Co., and other data submitted, your committee recommend favorable consideration of the proposed legislation.

Appended hereto is pertinent evidence and additional data is on file with the Secretary of the Senate.

FEDERAL WORKS AGENCY,
Washington, November 2, 1943.

The Honorable ALLEN J. ELLENDER,
Chairman, Committee on Claims, United States Senate.

DEAR SENATOR ELLENDER: Reference is made to your letter of July 9, 1943, and to my reply thereto of July 14, 1943, concerning S. 1324, a bill for the relief of the Wisconsin Electric Power Co.

The bill proposes to appropriate "to the Wisconsin Electric Power Company of Milwaukee, Wisconsin, the sum of \$5,433.75, in full satisfaction of its claim against the United States for compensation for damage to its property which resulted when an employee of the Works Progress Administration drove an automatic air-driven tool into an underground cable, owned by the said company, near the intersection of South Sixth and West Canal Streets in Milwaukee, Wisconsin, on September 23, 1937."

Attention is called to line 11, page 1, of the bill. The records of this Agency disclose that the damage occurred near the intersection of North Sixth and West Canal Streets, not South Sixth Street as stated in the bill.

It appears that on September 23, 1937, and for some time prior thereto, Works Progress Administration employees were engaged on a sewer construction project along North Sixth Street near the intersection with West Canal Street, Milwaukee, Wis.; that the improvements consisted of the installation of a 15-inch storm sewer and the connecting thereto of several 8-inch drains; that the course of the sewer excavations intersected the subsurface electrical facilities of the Wisconsin Electric Power Co.; that the Works Progress Administration foreman knew the exact location of the subsurface facilities which were partially exposed at the time the damage occurred; that, although the excavation of the concrete street surface necessitated the use of pneumatic spades, after removal of the concrete surface the workers were informed of the location of the electrical facilities and instructed by the foreman to proceed carefully with pick and shovel; that, while the foreman was busy at another location, one of the pneumatic-spade operators continued to use the spade, in complete disregard of instructions to the contrary, with the result that he dug into an electric railway feeder cable causing extensive damage to the company's intricate system of transmission facilities and caused interruption of electrical service to many industrial establishments in the area.

The Works Progress Administration spade operator admits that he was acting contrary to the instructions of his foreman but states that he was anxious to uncover the cables in order to reduce the danger and with the hope of gaining favor with his foreman.

Approximately 2 years after the accident occurred the power company presented a claim in the sum of \$8,941 to the Works Progress Administration for the damage to its transmission facilities. The act of December 28, 1922 (42 Stat. 1066), in authorizing the consideration and determination of claims for damage to or loss of privately owned property provides that such claims must be presented within 1 year from the date of accrual and must be in an amount of \$1,000, or less. The company was advised that the Works Progress Administration had no authority of law to entertain the claim inasmuch as the amount exceeded the jurisdictional limitation, and for the further reason that presentation was not made within the required time limitation.

In view of the extensive damage, the Public Service Commission of Wisconsin was requested to survey the inventory of the alleged damage and to submit a report on the following: (1) whether the extensive damage alleged could be reasonably said to have resulted from the act of the Works Progress Administration

spade operator; and (2) whether the amount claimed was commensurate with the damage sustained.

The chief engineer of the public service commission reports that the conduit in question consisted of nine ducts, containing railway, light and power, telephone and transmission cables, and that, when the railway feeder 500-volt cable was struck, the short circuit caused a fire which melted the insulation and this was communicated through the adjacent ducts, damaging the cables and generating gas which followed the ducts into the manholes causing explosions.

The chief engineer also states that some of the cables were installed years ago, the latest being installed in 1915; that depreciation had accrued amounting to a substantial part of the claim; and that it would appear that the company should recover only the part for which it has not been reimbursed through depreciation charges. It is pointed out that amount of the original claim, \$8,941, included the original installation cost of the facilities and that no depreciation adjustments were included. The amount set forth in the bill, however, has been reduced to \$5,433.75. This Agency is unable to state whether the reduction of \$3,507.25 represents a depreciation adjustment.

It appears that, under the law of Wisconsin, the master is liable for the acts of a servant within the scope of his employment even though the act was in violation of the master's instructions or expressly forbidden by him. Accordingly, this Agency recommends enactment of the proposed legislation in such amount as Congress may deem appropriate.

There are enclosed photostatic copies of pertinent papers from the files of this Agency.

The Bureau of the Budget advises me that there would be no objection to the submission of this report to the committee.

Sincerely yours,

PHILIP B. FLEMING,
Major General, United States Army,
Administrator.

STATE OF WISCONSIN,
County of Milwaukee, ss:

G. W. Van Derzee, being first duly sworn, upon oath deposes and says:

I am vice president and general manager of Wisconsin Electric Power Co., a Wisconsin corporation having an office at No. 231 West Michigan Street, Milwaukee, Wis., hereinafter referred to as the "company."

I have access to, and am familiar with, the records of the company with respect to its claim against the United States arising out of damage caused to certain property of the company on September 23, 1937, resulting from the negligence of an employee or employees of Works Progress Administration.

* * * * *

The conduit run at the location at which the conduit was so broken through enclosed and protected nine ducts containing railway, light and power, telephone, and transmission cables. From said location the said conduit, ducts, and cables run in a northerly direction to a manhole on the south side of the North Menomonee Canal, at which point the cables connect with submarine cable risers and extend northerly under the canal to submarine cable risers in a manhole on the opposite side of the canal, from which point the cables run through ducts and conduits to their respective termini.

On breaking through the conduit the air tool in the hands of said Works Progress Administration employee penetrated the duct enclosing one of the cables, to wit, railway feeder cable No. 66, and drove into said cable causing a fire in the cable which fused the lead sheath and copper conductors of the cable and the duct in which the cable was enclosed. The fire and molten metal resulting from the damage to cable No. 66 was communicated through adjacent ducts, damaging the cables therein enclosed and partly choking such ducts with molten lead and copper. The damage was carried along from the point of the original contact with the cable to the submarine cables between the risers on either side of the canal, and said submarine cables were similarly damaged. The burning cables generated considerable gas which accumulated in the manholes causing an explosion which blew off six manhole covers and damaged a manhole wall. One manhole cover was broken and the tops of three others were broken loose.

* * * * *

The construction of the company's ducts at this location complied with all State and local requirements. The applicable provisions of the Wisconsin State Electrical Code were as follows:

"ORDER 1291. CONSTRUCTION OF DUCT SYSTEMS

"E. *Protection.*—

"2. *Damage.* Ducts should be protected by concrete or other covering where necessary to prevent being damaged by workmen when digging, or by other causes.

"F. *Clearances.*— "1. *General.* * * * The distance between the top covering of the duct system and the pavement surface, or other surface under which the duct system is constructed, shall be sufficient to protect the duct system from injury."

There are no requirements in the code as to the specific depth a conduit must be installed below the pavement. This depth is usually about 3 feet but, whenever grading takes place after a conduit has been installed, it may vary more or less depending on the new grade. The construction involved in this claim complied with all code requirements because it was protected by concrete and installed sufficiently below the pavement surface.

The company also complied with local regulations in furnishing to the city of Milwaukee annually, on April 1, a complete set of blueprints showing the location of underground conduits and cables in the city of Milwaukee. The location of the conduits and cables in the city of Milwaukee. The location of the conduit and cables involved in this claim was included in these blueprints.

All of the cables which were damaged had overload protection which functioned in the manner which would reasonably be expected under the circumstances.

As the result of the damage caused as aforesaid, the company was compelled to abandon the damaged submarine cables between the submarine risers on either side of the canal, and to incur substantial expense to repair the conduit and cables connecting with the submarine sections which were abandoned. It is impractical to repair submarine cables between the risers at either side of the canal, hence they were abandoned and will permanently remain in the bed of the canal.

The following is a detailed statement showing the original installation cost and the year of the installation of the submarine cables which were abandoned, accrued depreciation, the cost of labor, and material and sundry expense for repairing the conduit and cables exclusive of the abandoned submarine cables:

Submarine cables abandoned

Item 1. 2,000,000, 1 conductor, 600-volt, railway cable feeder No. 66, active, 1915-----	\$654. 58
Less salvage credit for a portion of the cable removed-----	264. 60
	<hr/> 389. 98
Item 2. 2,000,000, 1 conductor, 600-volt, railway cable feeder, spare, 1915-----	654. 58
Item 3. 1,000,000, 1 conductor, 600-volt, railway cable feeder, spare, 1913-----	855. 75
Item 4. 250,000, 4 conductor, 4,500-volt, light and power feeder E-30, active, 1913-----	1, 161. 02
Item 5. 100,000, 4 conductor, 4,500-volt, light and power feeder, spare, 1913-----	998. 87
Item 6. 250,000, 4 conductor, 4,500-volt, light and power feeder, spare, 1913-----	1, 161. 02
Item 7. 4/0, 3 conductor, 13,200-volt transmission cable line H-506, active, 1924-----	2, 048. 67
Item 8. 25 pair No. 14 telephone cable, active, 1908-----	119. 45
	<hr/> 7, 389. 34
Less accrued depreciation on items 1 to 8, inclusive-----	3, 507. 25
	<hr/> <hr/> 3, 882. 09

Submarine cables abandoned—Continued

Item 9 Labor, material, and sundry expense for repairing conduit and cables (exclusive of submarine cable):	
Labor.....	\$1,082.67
Sundries.....	34.65
Auto expense.....	115.34
Material.....	421.74
Total.....	1,654.40
Less salvage credit for material removed.....	102.74
Total cash expenditures in connection with repairs to operating cable.....	1,551.66
Amount of claim (total).....	5,433.75

All of the submarine cables at this location were in usable condition on the date of the accident and were considered necessary to the operation of the company's business.

It has been the company's practice when installing submarine equipment to make reasonable allowances for future growth and expansion of the system and to provide sufficient reserve or spare cables which could be connected in the event of submarine cable failures. This is necessary because temporary equipment cannot be installed in connection with river crossings.

Although a number of the abandoned cables are indicated as being "spare," because of this spare equipment it was possible to cut over with the minimum amount of delay in the event of a cable failure. At the present time the company does not have adequate spare canal crossing equipment at this location. Hence any plans for future expansion must include installation of additional submarine cables.

The company duly notified the Works Progress Administration and the city of Milwaukee, the sponsor of the sewer-construction project on which the aforesaid Works Progress Administration employees were working when the aforesaid damage was caused, of the aforesaid damage and filed claim for compensation with the Works Progress Administration and the city. However, no compensation has ever been received by the company.

The company is advised and believes that liability for compensation should rest upon the Works Progress Administration, but that there exists no provision of law authorizing the consideration by the Works Progress Administration of claims in excess of \$1,000.

G. W. VAN DERZEE.

Subscribed and sworn to before me this 19th day of June 1943.

[SEAL]

CORNELIUS YOUNG, *Notary Public.*



